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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 No. C 03-03817 JSW

9 EDWARDS LIFESCIENCES LLC, et al.,

10 Plaintiffs,

11 v.

12 COOK INCORPORATED, et al.,

13 Defendants.
14 _____/**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' PARTIALLY
UNOPPOSED ADMINISTRATIVE
MOTION FOR LEAVE TO
DESIGNATE ADDITIONAL
CLAIM TERMS**

15 This matter comes before the Court upon consideration of the Administrative Motion for
16 Leave to Designate Additional Claim Terms filed by Defendants Cook Incorporated and W. L.
17 Gore & Associates, Inc. and Plaintiffs' partial opposition thereto. Defendants request the Court
18 to construe ten terms they have proposed and to conduct a further *Markman* hearing on
19 additional terms, if necessary. Plaintiffs do not oppose Defendants' request to construe
20 additional terms at the *Markman* hearing, but disagree with the terms proposed by Defendants
21 and do not believe an additional *Markman* hearing is warranted.

22 The Court understands, based on its involvement in related litigation, that there are
23 significant interests at stake in this case for all parties. It further appreciates that counsel are
24 required to advocate zealously on behalf of their clients. However, the Court expects counsel to
25 cooperate and interact with one another civilly and to accommodate one another when the need
26 arises, for instance with respect to the meet and confer process on designating terms for
27 construction.
28

1 The Court also notes that the instant motion was submitted to the Court less than two
2 weeks before the parties Joint Claim Construction and Prehearing Statement was due to be filed.
3 The Court hereby puts all parties on notice that it will not tolerate unnecessary delays in this
4 litigation. Therefore, the parties are forewarned that they should engage in any meet and confer
5 proceedings required sufficiently in advance of Court deadlines such that if a dispute arises, the
6 parties can seek relief from the Court well in advance of the set deadlines. Finally, the Court
7 also puts all parties on notice that if it finds it necessary, it will not hesitate to require counsel
8 and their respective clients to appear at a status conference to address the manner in which the
9 litigation is being conducted.

10 With that preface, the Court concludes that the present record does not demonstrate that
11 a second *Markman* hearing is required, and Defendants request for a second hearing is
12 DENIED.

13 To the extent Defendants request leave to designate additional terms, their motion is
14 GRANTED. The parties shall meet and confer by no later than September 6, 2006, by
15 telephone, in an effort to agree upon twelve (12) terms to be construed at the *Markman* hearing.
16 If the parties are unable to agree on 12 terms, Plaintiffs shall be entitled to designate six terms
17 for construction and Defendants shall be entitled to jointly designate six terms for construction.
18 The parties shall include in their Joint Claim Construction and Prehearing Statement a
19 certification that they have met and conferred as required by the terms of this Order.

20 It is further ordered that the deadlines set in this case are modified as follows:

21 The parties' Joint Claim Construction and Prehearing Statement is now due on
22 September 12, 2006.

23 Plaintiffs' Expert Disclosures and Reports on Claim Construction are now due on
24 September 15, 2006.

25 Defendants' Responsive Disclosures and Reports on Claim Construction are now due on
26 October 6, 2006.

27 Completion of Claim Construction Discovery is extended to October 20, 2006.

28 Plaintiffs' Opening Claim Construction Brief is now due on November 6, 2006.

Defendants' Responsive Claim Construction Brief is now due on November 20, 2006.

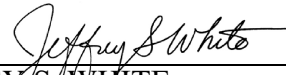
Plaintiffs' Reply Claim Construction Brief is now due on December 4, 2006.

The parties Amended Joint Claim Construction Brief is due on December 4, 2006.

The Claim Construction Tutorial and Claim Construction Hearing remain set for hearing on January 17, 2007 at 2:00 p.m. and January 24, 2007 at 11:00 a.m.

IT IS SO ORDERED.

Dated: August 29, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California